

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)
)
Digital Broadcasting OVS)
)
Certification to Operate an)
Open Video System)
)

MEMORANDUM OPINION AND ORDER

Adopted: December 30, 2021

Released: December 30, 2021

By the Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. On December 20, 2021, Digital Broadcasting Corporation (Digital Broadcasting) filed an application for certification to operate an open video system pursuant to section 653(a)(1) of the Communications Act of 1934, as amended (Communications Act) and the Commission's rules.¹ Digital Broadcasting seeks to operate an open video system serving communities located in the top 210 designated market areas (DMA) in the United States of America, as well as the U.S. Territories, Commonwealths, and the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa (the Service Areas). In accordance with our procedures,² the Commission published notice of receipt of the Digital Broadcasting application³ and posted the application on the Internet.⁴ No comments regarding this application were received.

2. Pursuant to section 653(a)(1) of the Communications Act, any entity meeting the requirements may obtain certification to operate an open video system.⁵ In light of the brief period (ten days) for Commission review of certification filings, the Commission concluded that Congress intended there to be a streamlined certification process.⁶ Open video system operators may apply for certification

¹ 47 U.S.C. § 573(a)(1); 47 CFR § 76.1502.

² See *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems*, 11 FCC Rcd 18223, 18247 (1996) (*Second Report and Order*).

³ See *Public Notice*, "Digital Broadcasting Corporation Files An Application For Open Video System Certification," DA 21-1617 (MB, rel. Dec. 21, 2021).

⁴ The Digital Broadcasting application is available via the Internet at <https://www.fcc.gov/general/current-filings-certification-open-video-systems>.

⁵ See 47 U.S.C. § 573(a)(1); 47 CFR § 76.1501. An operator of a cable system however, generally may not obtain such certification within its service area unless it is subject to "effective competition" as defined in section 623(1)(l) of the Communications Act, 47 U.S.C. § 543(l)(l). The effective competition requirement does not apply to a local exchange carrier that is also a cable operator that seeks open video system certification within its cable service area.

⁶ *Second Report and Order*, 11 FCC Rcd at 18243.

at any point prior to the commencement of service. Open video system operators must obtain certification prior to the commencement of service, allowing sufficient time to comply with the Commission's requirements regarding notifications that applicants must provide to potential programming providers.⁷

3. As part of the certification process, the applicant must acknowledge and accept the obligations associated with operation of an open video system and must provide certain information regarding its proposed system.⁸ To obtain certification, an applicant must file FCC Form 1275, which requires, among other things: (a) a statement of ownership, including a list of all affiliated entities;⁹ (b) a representation that the applicant will comply with the Commission's regulations under section 653(b) of the Communications Act;¹⁰ (c) a list of the names of the communities the applicant intends to serve;¹¹ (d) a statement of the anticipated type and amount of capacity that the system will provide; and (e) a statement as to whether the applicant is a cable operator applying for certification within its cable franchise area.

II. DISCUSSION

4. Digital Broadcasting has submitted an application on FCC Form 1275 for certification to operate an open video system in the vastly expansive Service Areas. We deny Digital Broadcasting's certification because we find that its application was deficient with respect to the requirement that the filing must be served on all local communities anticipated to be covered by OVS service upon completion of the system.

5. The Commission's rules expressly require that "the applicant must serve a copy of its filing" on "the anticipated *local* communities to be served on completion of the system."¹² This requirement ensures that local communities have an opportunity to participate in the Commission's process, including filing oppositions and/or comments. Digital Broadcasting's application contains a list of hundreds of community unit identification (CUID) numbers throughout 210 DMAs as well as the U.S. Territories, Commonwealths, and the U.S. Virgin Islands, Puerto Rico, Guam, and American Samoa, as well as a separate list of individuals from state, territorial, and local authorities who, according to the certificate of service, were served electronically. But the application does not make clear whether every local community covered within Digital Broadcasting's anticipated service area and listed in the CUIDs

⁷ *Id.* at 18247; 47 CFR § 76.1502(a); *see also Implementation of Section 302 of the Telecommunications Act of 1996: Open Video Systems*, 14 FCC Rcd 19700, 19705 (1999) (deleting the pre-construction certification requirement from Section 76.1502(a) of our rules).

⁸ *Second Report and Order*, 11 FCC Rcd at 18245-46.

⁹ For purposes of determining whether a party is an affiliate, we have adopted the definitions contained in the notes to section 76.501 of our rules. 47 CFR § 76.501. Generally, we will consider an entity to be an open video system operator's "affiliate" if the open video system operator holds 5 percent or more of the entity's stock, whether voting or non-voting. *Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems*, 11 FCC Rcd 20227, 20235 (1996) (*Third Report and Order*); *see also* 47 CFR § 76.1500(g).

¹⁰ 47 U.S.C. § 573(b). This provision sets forth the Commission's requirements regarding non-discriminatory carriage; just and reasonable rates, terms and conditions; a one-third capacity limit on the amount of activated channel capacity on which an open video system operator may distribute programming when demand for carriage exceeds system capacity; channel sharing; sports exclusivity, network non-duplication and syndicated exclusivity; and non-discriminatory treatment in presenting information to subscribers. *See also* 47 CFR § 76.1502(a).

¹¹ 47 CFR § 76.1502(d)(2).

¹² *See* 47 CFR § 76.1502(c)(6) (emphasis added); 47 CFR § 76.1502(d)(1) ("On or before the date an FCC Form 1275 is filed with the Commission, the applicant must serve a copy of its filing *on all local communities* identified pursuant to paragraph (c)(6) of this section" (emphasis added)).

was properly served. And in some cases, it appears that they were not.¹³ Thus, Digital Broadcasting's certification application was deficient and its certification is denied.¹⁴

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, that the application of Digital Broadcasting Corp. for certification to operate an open video system **IS DENIED** without prejudice.

7. This action is taken by the Chief, Policy Division, Media Bureau, pursuant to the authority delegated by section 0.283 of the Commission's Rules.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Maria L. Mullarkey
Chief, Policy Division
Media Bureau

¹³ For example, the application lists two CUIDs within the Wilkes-Barre-Scranton-Hazleton DMA – PA 0830 (Scranton, PA) and PA 0399 (Hazleton, PA) – but the service list indicates that only the Mayor of the City of Wilkes-Barre, PA has been served with Digital Broadcasting's application.

¹⁴ We note that, under our rules, an applicant may refile a certification application. The Commission will consider a revised or refiled FCC Form 1275 to be a new proceeding. *See* 47 CFR § 76.1502(f). Any future filing should list each community covered by the CUIDs and specify who from each of those communities was served with the application.

¹⁵ 47 CFR § 0.283.